

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KYLE FRANK JOHNSON and
ALEC DANIEL RUDISEL, Minors.

DEBORAH RUDISEL,

Petitioner-Appellee,

v

DANIEL C. JOHNSON,

Respondent-Appellant.

UNPUBLISHED

April 19, 2005

No. 258701

Antrim Circuit Court

Family Division

LC No. 03-002770-NA

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to his minor children pursuant to MCL 712A.19b(3)(h) and (k)(ii). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The petitioner, the mother of the minor children, requested termination at initial disposition, alleging that respondent had pleaded guilty to assault with intent to commit sexual penetration with regards to respondent's stepdaughter Michelle, who was the half sister of the minor children, and that he was sentenced to 80 to 120 months in prison. Respondent pleaded guilty to these allegations in the petition and the trial court took jurisdiction over the minor children.

Based on respondent's testimony at the termination trial, his guilty plea to the criminal charge, and his plea to the allegations in the termination petition, the trial court did not err in finding that MCL 712A.19b(3)(k)(ii) had been established by clear and convincing evidence. Moreover, respondent also testified that he was currently serving a prison sentence of 80 to 120 months, with his earliest discharge date being in 2008. Accordingly, respondent was to remain in prison for a period exceeding two years and there was no reasonable expectation that he would be able to provide proper care and custody within a reasonable time, considering the ages of the minor children. The court did not clearly err in finding that MCL 712A.19b(3)(h) was established as well.

Respondent cites *In re Taurus*, 415 Mich 512; 330 NW2d 33 (1982) as standing for the proposition that, as long as the minor children are adequately cared for, even when a parent is imprisoned, the children are not without proper care or custody. However, even if the court had erred in determining that MCL 712A.19b(3)(h) was established, only one statutory ground for termination needs to be proven and there is no question that clear and convincing evidence established MCL 712A.19b(3)(k)(ii). Accordingly reversal would not be warranted on this ground.

Furthermore, the trial court did not err in determining that there was no evidence presented that termination of respondent's parental rights was not in the best interests of these children. The trial court specifically noted that it relied on respondent's testimony and the testimony of two expert witnesses. Respondent argues that the expert testimony given by Dr. Ulrich cannot be considered to prove that abuse existed and does not refer to who the victim is although it is clear that Dr. Ulrich discussed possible sexual abuse with regard to Danny, who was respondent's stepson and the stepbrother of the minor children. The court, however, did not rely on Dr. Ulrich's opinion that Danny was sexually abused by respondent in making its determination. While the court did address Dr. Ulrich's testimony when it addressed this statutory subsection, the only reference to Dr. Ulrich's testimony was that respondent's "minimization of sexual gratification with Michelle raised a significant concern and suggested a sadistic personality, and with his denial for committing the act of sexual fulfillment, would not qualify him for parole within the prison system." The evidence was undisputed that respondent was convicted of assault with intent to commit sexual penetration with regard to Michelle. Respondent's argument is, therefore, without merit.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ David H. Sawyer
/s/ Kurtis T. Wilder